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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 569

GENERAL FOODS CORPORATION, HUNT FOODS, INC. and MORTON SALT COMPANY,

Petitioners,

vs.

STATE WHOLESALE GROCERS, et al.

Respondent.

OBJECTIONS TO MOTION OF THE GREAT ATLANTIC & PACIFIC TEA COMPANY FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR CERTIORARI.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondents respectfully urge the denial of the Motion of the Great Atlantic & Pacific Tea Company (hereinafter referred to as "A & P") for Leave to File a Brief as *Amicus Curiae* in Support of the pending Petition for Writ of Certiorari.

A & P has, in effect, filed its b as *amicus curiae* by appending the same to its Mot It received the consent of no party to the cause for such action. Consequently, it is in violation of the substance of Rule 42 of the Rules of this Court. Although this Court has not commented upon the effect of this practice, the Supreme Court of Illinois summarily denies such motions when accom-

panied by the brief sought to be filed. *Froehler* v. *North American Life Ins. Co. of Chicago*, 374 Ill. 17, 27; 27 NE 2d. 833, 838 (1940). It is respectfully submitted that because of A & P's breach of Rule 42, its Motion should be summarily denied.

There are other compelling, cogent reasons for denial of the Motion. A & P is no longer a party to this cause, having been dismissed out of the case by reason of the abandonment by Plaintiffs of all issues under Sections 2(a) and 2(f) of the Clayton Act. Its appearance here has not received the consent of any of the parties hereto. It is not interested in any other case which will be affected by the decision of this one. Its application, therefore, falls directly within the prohibition expressed by this Court in *Northern Securities Co.* v. *U. S.*, 191 US 555 (1903) wherein at page 556 this Court said:

> "It does not appear that applicant is interested in any other case which will be affected by the decision of this case; as the parties are represented by competent counsel, the need for assistance can not be assumed and consent has not been given. Leave to file must, therefore, be denied."

A & P having disposed of its ownership of the magazine, *Woman's Day*, the service or facility here involved, it thereby, rid itself of any possible interest in the future of that magazine or the effect of any decision of this Court relative thereto. Nor is any past loss of advertising revenues by A & P, even if attributable to the decision herein, sufficient to constitute a present interest inasmuch as the decision of this Court can not in any way affect such past interest of A & P in that magazine, nor can A & P incur any possible future liability by reason of the limited 2(d) issue here involved. Further, although A & P seeks to predicate an "interest" upon a speculative assumption that the decision, if allowed to stand, will affect future autonomous enterprises which it, A & P, might contemplate wherein both customer and supplier

may be involved, it sets forth no facts or bases whatsoever justifying such speculation. Such speculative "interest" of A & P in a cooperative service or facility which might at some future time be contemplated is no different than the interest of any other supplier or retailer of any commodity who similarly might contemplate a future cooperative promotional plan. Should participation as *amicus curiae* be granted for such reasons, there would be no limit or meaning to the concept.

Further, contrary to Rule 42 (3) A & P has failed to set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties relevant to the disposition of the Petition for Certiorari. Both the Motion of A & P and the brief appended thereto are devoted exclusively to the merits and fail in any way to urge grounds for or arguments in support of the Petition for Certiorari not contained in the Petition heretofore filed.

Respondents are not here filing any answer to the prematurely filed brief of A & P. Should this Court grant the Motion, Respondents respectfully request sufficient time within which to file a brief in opposition to the appended brief of A & P.

For all of the foregoing reasons, Respondents respectfully urge the denial of the Motion of A & P for Leave to File its brief as *Amicus Curiae* or, in the alternative, should the Motion be granted, Respondents request a reasonable amount of time within which to file their brief in opposition thereto.

Respectfully submitted,

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Of Counsel